

NTSB Order No. EA-5131

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 27th day of December, 2004

Docket SE-16900

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deadlines.¹ The Administrator asserts that "[n]othing in the Board's rules...or any prior decision indicates that a pre-complaint document could substitute for an answer." (Petition at p. 4.)

As we explained in EA-5113, our decision in this case does not contradict our precedent regarding strict adherence to procedural deadlines. In none of those cases is there any indication that the respondent submitted a timely, specific rebuttal of the Administrator's allegations, followed by a timely opposition to the Administrator's motion to deem the allegations admitted, as occurred in this case. Thus, the issue in this case is not whether respondent demonstrated good cause for his late-filed answer, but rather, whether it can fairly be said that respondent failed to file a timely answer in the first place.

In holding that respondent's appeal document constituted both a notice of appeal and an answer, we did not carve out new ground, as the Administrator appears to suggest. Our law judges have frequently treated pre-complaint filings as a combined notice of appeal and answer, regardless of whether the filing is labeled as such. See, e.g., Administrator v. Matthews, NTSB Order No. EA-5073 (2004) (respondent's notice of appeal accepted as a combined appeal and answer); Administrator v. Meacham, NTSB Order No. EA-4633 (1998) (respondent's notice of appeal docketed as a combined appeal and answer); Administrator v. Crawford, NTSB Order No. EA-4553 (1997) (respondent's pre-complaint filing accepted as combined notice of appeal and answer, despite respondent's claim that it was intended only as a notice of appeal and not an answer).²

The Administrator's fear that this long-standing practice will lead to "uncertainty and chaos" in the pleading process is clearly unfounded. We recognize that every notice of appeal that could be interpreted as contesting the factual basis for the Administrator's charges may not initially be recognized by our law judges or their staff as a combined appeal and answer. However, any uncertainty regarding such documents will be

¹ Respondent has filed a response, opposing reconsideration.

² In each of the cited cases, the references to the combined notice of appeal and answer are contained in the law judges' initial decisions, which are appended to the full Board's decisions. The Board is also aware of additional references (to pre-complaint filings being treated as a combined notice of appeal and answer) in initial decisions that were not appealed to the full Board.

resolved by evaluating whether and how the respondent replies to the Administrator's motion to deem the facts admitted.³

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

ENGLEMAN CONNERS, Chairman, ROSENKER, Vice Chairman, and CARMODY, HEALING, and HERSMAN, Members of the Board, concurred in the above order.

³ See, e.g., Administrator v. Casino Airlines, Inc., NTSB Order No. EA-5091 (2004), reconsideration denied, NTSB Order No. EA-5108 (2004), where the respondent's failure to reply to the Administrator's motion was cited as a basis for upholding the law judge's decision not to treat the document noticing respondent's appeal from the order of revocation as a combined appeal and answer.